Analysis

A. Determination to go to War Before Congressional Authorization

Misleading Congress and the American Public Concerning the Decision to go to War, Determination to Go to War Before Congressional Authorization

Our investigation has found that President Bush and members of his Administration made numerous public statements to the effect that a decision had not been made to invade Iraq, when in fact the record indicates that such a decision had been made.

Among other things, we have found: Immediately after the September 11 attacks, President Bush and members of his Administration displayed an immediate inclination to blame Iraq - the President asked Richard Clarke to determine if Hussein is "linked in any way;" White House officials instructed Wesley Clark to state that the attack was "connected to Saddam Hussein;" and Undersecretary of Defense Douglas Feith proposed that the U.S. select "a non al-Qaeda target like Iraq." The Downing Street Minutes provide unrebutted documentary evidence that in the spring and summer of 2002 it was understood by the Blair government that the Bush Administration had irrevocably decided to invade Iraq. These documents reveal that President Bush had told Prime Minster Blair "when we have dealt with Afghanistan, we must come back to Iraq" (Fall, 2001); "Condi's enthusiasm for regime change is undimmed" (March 14, 2002); the U.S. has "assumed regime change as a means of eliminating Iraq's WMD threat" (March 25, 2002) and; and "Bush wanted to remove Saddam through military action, justified by the conjunction of terrorism and WMD" and "the intelligence and facts were being fixed around the policy" (July 23, 2002).

Among other things, we have also found: The "marketing" campaign for the war which included the creation of the so-called "White House Iraq Group;" the "rollout of speeches and documents;" the release of a white paper inaccurately describing a "grave and gathering danger" of Iraq's allegedly "reconstituted" nuclear weapons program; and the deliberate downplaying of the risks of occupation. The plan by which the Bush and Blair Administration sought to use the UN to "wrongfoot Saddam on the inspectors and the UN SCRs [Security Council Resolutions]" in the winter of 2002 and spring of 2003, constitutes further evidence that the decision to invade Iraq had been made. This is reflected by the fact that Defense Policy Board Member, Richard Perle admitted the U.S. "would attack Iraq even if UN inspectors fail to find weapons;" Vice President Cheney reportedly acknowledged to Hans Blix that the U.S. was "ready to discredit inspectors in favor of disarmament;" and President Bush was "infuriated" by reports of Iraq's cooperating with UN inspectors. In addition, it has also been disclosed that at a January 31, 2003 meeting with Prime Minister Blair, President Bush was so concerned by the failure to locate WMD that he proposed the U.S. "fly ... UC reconnaissance aircraft planes with fighter cover over Iraq, painted in

UN colours" and that "[i]f Saddam fired on them he would be in breach [of UN resolutions]."

Unauthorized War Actions and Provocations

Our investigation has found that there is evidence the Bush Administration redeployed military assets in the immediate vicinity of Iraq and conducted bombing raids on Iraq in 2002 in possible violation of the War Powers Resolution, Pub. L. No. 93-148, and laws prohibiting the Misuse of Government Funds, 31 U.S.C. § 1301.

Among other things, we have found: A military commander told Senator Bob Graham in February 2002 that "[w]e are moving military and intelligence personnel and resources out of Afghanistan to get ready for a future war in Iraq;" and "[b]y the end of July [2002], Bush had approved some 30 projects that would eventually cost $700 million." The bombing campaign engaged in by the U.S. and Great Britain in 2002 and early 2003 involved more than 21,000 sorties and hundreds of thousands of pounds of bombs, has been described as "a full air offensive;" and a former U.S. combat veteran stated that based on what he had witnessed, "[t]he war had already begun."

B. Misstating and Manipulating the Intelligence to Justify Preemptive War

Links to September 11 and al Qaeda

Our investigation has found that President Bush and members of his Administration made numerous false statements regarding linkages between Iraq and the September 11 attacks, and also may have sought to manipulate intelligence to support these statements. This includes misstatements concerning general linkages between Iraq and al Qaeda; an alleged meeting between Mohammed Atta and Iraqi Intelligence officials; and allegations that Iraq was training al Qaeda members to use chemical and biological weapons.

With regard to general linkages between Iraq and al Qaeda, members of the Bush Administration ignored at least five separate reports from within their own Administration, including

- a report shortly after September 11 prepared by Counterterrorism Coordinator Richard Clarke finding no connection with Iraq that was "bounced back," with his superiors saying "[w]rong answer ... . Do it again."

- a September 21, 2001 classified intelligence briefing that "the U.S. intelligence community had no evidence linking the Iraqi regime of Saddam Hussein to the

attacks and that there was scant credible evidence that Iraq had any significant collaborative ties with Al Qaeda."

- a June 21, 2002 CIA report which found "no conclusive evidence of cooperation on specific terrorist operations."

- the October 2002 NIE, which gave a "Low Confidence" rating to the notion of "[w]hether in desperation Saddam would share chemical or biological weapons with Al Qa'ida."

- a January, 2003 CIA report that the "Intelligence Community has no credible information that Baghdad had foreknowledge of the 11 September attacks or any other al-Qaida strike." Given this record, it is particularly hard to justify Administration statements such as Secretary Rumsfeld's September 22, 2002 claim that he had "bulletproof" evidence of ties between Saddam and al Qaeda.

The evidence that members of the Bush Administration sought to manipulate and pressure intelligence officials on this linkage includes Deputy Director of the CIA Richard Kerr's report that people at the CIA have stated they have been "pushed too hard" on this point and felt "too much pressure;" a CIA ombudsman who reported unprecedented "hammering" on this issue; an FBI official who stated that the "Bush administration...was misleading the public in implying there was a close connection [between Iraq and al Qaeda];" and former CIA Agent Paul Pillar's statement that "[i]ntelligence was misused publicly to justify decisions that had been already made."

We also have found evidence that Vice President Cheney's December 9, 2001 statement that the meeting between Mohammed Atta and an Iraqi intelligence official in Prague had been "pretty well confirmed" was either knowingly or recklessly false. This includes the fact that Czech government officials had expressed doubts the meeting had occurred; both the CIA and FBI had concluded that "the meeting probably did not take place;" and Administration records indicated that Mr. Atta was in Virginia Beach, Virginia at the time of the meeting. There is also evidence that the Vice President's office put undue pressure on the CIA to substantiate this meeting, with the Deputy Director of the CIA insisting to Mr. Libby, "I'm not going back to the well on this. We've done our work."

Statements by President Bush on October 7, 2002 that "Iraq has trained al Qaeda members in bomb-making and poisons and deadly gases;" and Secretary Powell on February 5, 2003, "trac[ing] the story of a senior terrorist operative telling how Iraq provided training in these weapons to Al-Quaeda;" with both saying this relationship goes back for "decades" were also false. Among other things, we have found that a declassified Defense Intelligece Agency report from February 2002 indicated that the source of this information, Ibn al-Shaykh al-Libi, "was intentionally misleading the debriefers in making these claims;" that it was unlikely any relationship between Iraq and al Qaeda went back decades since "Saddam's regime is intensely secular and wary of Islamic revolutionary movements;" a classified CIA

report found that Mr. al-Libi was "not in a position to know if any training had taken place;" and Administration officials knew or should have known he fabricated his statements to avoid torture.

Resumed Efforts to Acquire Nuclear Weapons

Our investigation has found that President Bush and members of his Administration made false statements regarding Iraq's effort to acquire nuclear weapons, including general claims regarding such acquisition; assertions based on claims by Saddam Hussein's son-in-law; and a statement by Mr. Bush that Iraq was within six months of obtaining a nuclear weapon.

The Bush Administration appears to have ignored numerous intelligence reports indicating that there was no credible evidence of an ongoing nuclear program in Iraq, including:

- a 1999 IAEA report that there was "no indication that Iraq possesses nuclear weapons ... or any practical capability ... for the production of such material."

- British intelligence officials confirmation that Iraq's nuclear weapon's program was "effectively frozen."

- the pre-2002 CIA NIE indicating that Iraq did not have and was not trying to reacquire nuclear weapons; and the State Department INR's finding that it lacked "persuasive evidence that Baghdad has launched a coherent effort to reconstitute its nuclear weapons program." Given this record, it is difficult to defend statements such as Mr. Cheney's March 16, 2003 declaration that "we believe [Saddam] has, in fact, reconstituted nuclear weapons."

There is also evidence that the Vice President's statement on August 26, 2002 that the Administration has learned about Hussein's efforts to reacquire nuclear weapons from "Saddam's own son-in-law," Hussein Kamel al-Majid, was knowingly or recklessly false. This is first because Kamel was killed in February, 1996, so he "could not have sourced what U.S. officials 'now know;'" and second because Kamel's testimony to the IAEA was, according to *The Washington Post* "the reverse of Cheney's description" which was debriefed to U.S. officials.

President Bush's statement on September 7, 2002 that the IAEA had issued a new report that Iraq was "six months away from developing a [nuclear] weapon" also appears to be false and misleading, as *The Washington Post* found "there was no new IAEA report . . . . Bush cast as present evidence the contents of a report from 1996, updated in 1998 and 1999. In those accounts, the IAEA described the history of an Iraqi nuclear weapons program that arms inspectors had systematically destroyed."

Aluminum Tubes

Our investigation has found that President Bush and members of his Administration made numerous false statements that Iraq was seeking to acquire aluminum tubes in order to build a uranium centrifuge and leaked classified information to the press in order to further buttress their arguments for war.

Members of the Bush Administration appear to have ignored reports and information provided by at least five agencies and foreign intelligence sources, including:

- several reports by the Department of Energy which found that the tubes were "too narrow, too heavy, to long – to be of much practical use in a centrifuge."
- the State Department's INR [Bureau of Intelligence and Research], which "considers it far more likely that the tubes are intended for another purpose."
- the Defense Department which found the tubes "were perfectly usable for rockets."
- British Intelligence which found the tubes would require "substantial re-engineering" to serve as centrifuges.
- The International Atomic Energy Agency which found "all evidence points to that this is for the rockets"
- a one-page summary of National Intelligence Estimate personally delivered to President Bush in October, 2002, concluding that both the Energy and State Departments believed the aluminum tubes were "intended for conventional weapons."

Statements by the Vice President and Ms. Rice that they knew about Iraq's proposed use of the tubes for centrifuges with "absolute certainty" and that the tubes were "only really suited for nuclear weapons programs" are particularly questionable, since the dispute within the Administration has been described as a "holy war" and Administration sources have stated that Ms. Rice "was aware of the differences of opinion" and that her statements were "just a lie."

The evidence also shows that a September 8 lead article in *The New York Times* and a July 29, 2002 article in *The Washington Times* included classified information leaked by Administration officials. Among other things, *The New York Times* article quoted "anonymous" Administration officials as stating that "Iraq has stepped up its quest for nuclear weapons and has embarked on a worldwide hunt for materials to make an atomic bomb;" and *The Washington Times* article stated, "U.S. intelligence agencies believe the tubing is an essential component of Iraq's plans to enrich radioactive uranium to the point where it could be used to fashion a nuclear bomb." Special Prosecutor Fitzgerald has also filed documents detailing that

President Bush authorized the leaking of classified information to the press in order to undermine Ambassador Wilson.

Acquisition of Uranium from Niger

We have found that President Bush and members of his Administration made numerous false statements that Iraq had sought to acquire enriched uranium from Niger. In particular, President Bush's statements and certifications before and to Congress may constitute Making a False Statement to Congress in violation of 18 U.S.C. § 1001.

There is evidence that members of the Bush Administration, including the Vice President, have elevated intelligence information which supports this claim without adequate scrutiny, and may have applied undue pressure to intelligence officials to reach these conclusions. Among other things, a former high level CIA official has stated that when CIA personnel were unable to verify these claims Cheney became dissatisfied and it "was the beginning of what turned out to be a year-long tug-of-war between the C.I.A and the Vice-President's office;" another senior official reported that CIA analysts got "pounded on, day after day" on these issues; two former CIA officials explained that information on the charge was "passed directly to Washington without vetting them in the [U.S.] Embassy" in Rome; and former CIA agent Tyler Drumheller told *60 Minutes* "[t]he war in Iraq was coming. And they [the Administration] were looking for intelligence to fit into that policy."

The Bush Administration ignored numerous, contrary intelligence findings before making these false statements, including:

- Ambassador Wilson's finding that "no one had signed such a document."
- the CIA's warning to to Ms. Rice directly that "the evidence is weak."
- the State Department's finding that the charges were "highly dubious."
- statements by French Intelligence authorities that the story "doesn't make any sense."
- the conclusion of the National Intelligence Council, delivered to the White House in January, 2003, that the Niger uranium claim was unequivocally false.

The President's own statement in his State of the Union that "the British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa" is particularly difficult to defend, given that, among other things, the CIA had told the President's staff before his October 7, 2002 speech that the "President should not be a fact witness on this [Niger-Uranium] issue;" the CIA "raised several concerns about the fragmentary nature of the intelligence" before the State of the Union; and after the speech his Administration informed the UN it

"cannot confirm [the uranium] reports" (which the IAEA quickly found to be "not authentic").

Chemical and Biological Weapons

Our investigation has found that President Bush and members of his Administration have made numerous false statements regarding Iraq's chemical and biological weapons capability. These include false statements regarding Iraq's possession of chemical weapons generally; a charge by an Iraqi defector that he had helped bury significant amounts of chemical and other weapons; the existence of mobile chemical weapons laboratories; and Iraq's ability to deliver such weapons using unmanned aerial vehicles.

We have found evidence that members of the Bush Administration made misleading statements regarding Iraq's chemical weapons capability generally, even though they were aware of contrary intelligence provide by the DIA, the CIA, and the State Department. Among other things, the September 2002 DIA report found "[t]here is no reliable information on whether Iraq is producing or stockpiling chemical weapons, or where Iraq has or will establish its chemical warfare agent production facilities;" as early as 1995 the CIA had been informed that "after the gulf war, Iraq destroyed all its chemical and biological weapons stock;" and the State Department's INR flagged many of Secretary Powell's statements regarding chemical weapons as being "weak." There is also evidence the Administration's September 2002 statement that an Iraqi defector, Adnan Ihsan Saeed al-Haeder, had secretly helped bury tons of biological and chemical weapons was also knowingly and recklessly made, as the CIA determined by December 2001 that "the intelligence officer concluded that al-Haideri had made up the entire story, apparently in the hopes of securing a visa."

Further, there is evidence of the misleading nature of the Bush Administration's misstatements regarding mobile chemical weapons laboratories by virtue of the fact that they ignored numerous contrary information provided by the German and British Intelligence, as well as CIA officials. Among other things, German Intelligence informed the Administration "[t]his [Curveball] was not substantial evidence . . . [w]e made clear we could not verify the things he said;" British Intelligence officials informed the CIA they are "not convinced that Curveball is a wholly reliable source;" and shortly before Mr. Powell's speech, the CIA doctor who had met with Curveball noted that he "was deemed a fabricator," only to be told by his superior that "this war's going to happen regardless of what Curveball said or didn't say." Given the depth and credibility of these concerns, it is particularly difficult to defend the President's statement in his January 28, 2003 State of the Union Address that as a result of information provided by defectors "we know that Iraq, in the late 1990s, had several mobile biological weapons labs . . .designed to produce germ warfare agents and can be moved from place to a place to evade inspectors."

Finally in this regard, there is also evidence that then Secretary of State Powell and President Bush also made knowingly or recklessly false claims regarding Iraq's

unmanned aerial vehicles. Contrary to their assertions, the Air Force was found to "not agree that Iraq is developing UAVs primarily intended to be delivery platforms for chemical and biological (CBW) agents;" while the CIA "believed that the attempted purchase of the mapping software . . . may have been inadvertent."

C. Encouraging and Countenancing Torture and Cruel, Inhuman, and Degrading Treatment

Our investigation has found that there is evidence that individuals within the Bush Administration have violated a number of domestic laws and international treaty obligations concerning the mistreatment of detainees, including the Anti-Torture Statute, 18 U.S.C. § 2339; the War Crimes Act; 18 U.S.C. § 2441; the Geneva and Hague Conventions; the Convention Against Torture, Cruel, Inhuman, and Degrading Treatment; and the legal principle of command responsibility.

Department of Justice

We have identified evidence that then Attorney General Ashcroft and then White House Counsel Gonzales may bear responsibility for unlawful removal of detainees from Iraq in contravention of the War Crimes Act. Among other things, Mr. Ashcroft and Gonzales appear to have requested and approved a March 19, 2004 legal memorandum which, according to intelligence officials "was a green light" for the CIA to improperly remove detainees from Iraq.

Then Attorney General Ashcroft also appears to be responsible for approving a legal memorandum defining torture as acts consisting of "extreme acts" inflicting "severe pain," such as that accompanying "death or organ failure," which such standard is inconsistent with the Anti-Torture Stature, 18 U.S.C. § 2339. Finally, there is further evidence that Attorney General Gonzales bears responsibility for adopting a legal position that the ban on cruel, inhuman, and degrading treatment (CID) does not apply to detainees held outside of the United States, in contravention of the Convention Against Torture, Cruel, Inhuman and Degrading Treatment. Among other things, the former Legal Adviser to the U.S. Department of State has concluded that the ban on CID "would apply outside the U.S."

Department of Defense and CIA

There is evidence that Secretary Rumsfeld bears responsibility for certain torture and other illegal conduct in violation of the Anti-Torture Statute. Among other things, Secretary Rumsfeld has approved a November 27, 2002 memorandum which includes the "use of scenarios designed to convince the detainee that death or severely painful consequences for him and/or his family are imminent."

There is also evidence that Secretary Rumsfeld is responsibile under the command responsibility doctrine. Among other things, Secretary Rumsfeld has been appraised of numerous incidents of torture and CID as well as "ghosting" of detainees, yet has initiated no major action to hold those who committed the acts responsible or effectuated policy changes designed to prevent such misconduct from reoccurring.

There is also evidence that both Secretary Rumsfeld and then CIA Director Tenet have personally been aware of and approved the "ghosting" of at least one, and potentially further detainees, in potential violation of the Geneva and Hague Conventions. Specifically, with regard to the detaineee Hiwa Abdul Rahman Rashul, Secretary Rumsfeld admitted that Mr. Tenet asked him "not to immediately register the individual" (who was not registered for several additional months).

D. Cover-ups and Retaliation

The Niger Forgeries and the "Sliming" of Ambassador Wilson and His Family

Our investigation has found there is evidence (i) the President has abrogated his obligation under Executive Order 12958 to take corrective action concerning acknowledged leaks of classified information within his Administration; (ii) these leaks appear to have been committed to, among other things, exact retribution against Ambassador Wilson for disclosing that the Bush Administration should have known that the Niger documents were forgeries; and (iii) then Attorney General Ashcroft participated in a pending criminal investigation involving Karl Rove at a time when he had a personal and political relationship with Mr. Rove in violation of applicable conflict of interest requirements, namely 28 C.F.R. § 452, § 2-2.170 of the U.S. Attorneys Manual, and Sec. 1.7(b)(4) of the D.C. Rules of Professional Conduct. In addition, we have found that there have been a number of misstatements, and delays by Members of the Bush Administration since the criminal investigation into the leak was commenced.

There is evidence as documented in the Libby Indictment and related media accounts that at least four administration officials (including Mr. Libby and Mr. Rove) called at least five Washington journalists (Ms. Miller, Mr. Novak, Mr. Cooper, Mr. Pincus, and Mr. Woodward) and disclosed the identity and occupation of Wilson's wife as a CIA operative. These disclosures do not appear to have been inadvertent, rather they were, according to relevant reporters "given to me;" "unsolicited;" and obtained when the Administration official "veered" off topic. While it is uncertain whether these leaks violated specific criminal laws, there appears little doubt that leaks by Mr. Rove and Mr. Libby violated the requirements of their non-disclosure obligations, including Executive Order 12958 concerning the protection of national security secrets. This Order applies not only to negligent disclosure of classified information but also to persons simply "confirming" information to the media. Under the Executive Order, the President – about whom Robert Novak now claims he would "be amazed" if he did not know the leaker's identity – has an affirmative obligation to take "appropriate and prompt corrective action." (As *Newsweek* explained: "[a]ny

reasonable reading of the events covered in the indictment would consider Rove's behavior "reckless [under the EO]."

There is significant evidence that the motivation for disclosure of Ms. Plame's name was to obtain retribution against Ambassador Wilson. Among other things, our investigation has shown that the White House strategy concerning Mr. Wilson was to "slime and defend;" Karl Rove reportedly admitted that Mr. Wilson's wife "is fair game;" a former Administration official acknowledged they "were trying to not only undermine and trash Ambassador Wilson, but to demonstrate their contempt for CIA by bringing Valerie's name into it;" and Special Prosecutor Fitzgerald described a "concerted action" by "multiple people in the White House" using classified Information to "discredit, punish, or seek revenge" against Ambassador Wilson, and released a hand written note by the Vice President specifically questioning the Ambassador's actions.

There is also evidence that then Attorney General Ashcroft violated applicable conflict of interest requirements, namely 28 C.F.R. § 452, Sec. 2-2.170 of the U.S. Attorneys Manual, and Sec. 1.7(b)(4) of the D.C. Rules of Professional Conduct. Even though Mr. Rove had previously advised Mr. Aschcroft as a political candidate (earning almost $750,000 for his services) and was considered by many to be responsible for Mr. Ashcroft being named as Attorney General, the Attorney General was personally and privately briefed on FBI interviews with Karl Rove. It has also been reported that then Attorney General Aschcroft had been personally briefed on the Plame investigation a full two months after he was informed that Scooter Libby and Karl Rove were "trying to mislead the FBI to conceal their roles in the leak, according to government records and interviews." This conflict raises serious questions regarding the one-month delay between the time the CIA contacted the Department of Justice regarding possible criminal misconduct and the time the Department initiated a criminal investigation, the Department's subsequent delay in notifying the White House Counsel, and the White House Counsel's delay in asking White House staff to preserve relevant evidence. This may also explain why an FBI official admitted that the Department was "going a bit slower on this one because it is so high-profile."

We have also found evidence that there have also been a number of additional misstatements by members of the Bush Administration concerning the leak, as well as numerous delays that they have caused. Among other things, then White House Press Secretary Scott McClellan is responsible for at least eight misstatements concerning the involvement of Mr. Rove, Mr. Libby and other Administration officials in the leak, and Karl Rove also appears to have falsely denied whether he leaked the name or had "any knowledge" of the leak. There is also evidence Vice President Cheney misspoke on national television in September 2003, when he denied knowledge of who sent Mr. Wilson to Niger, when the Libby Indictment reveals the Vice President had been briefed on that very matter "on or about June 12, 2003."

Other Instances of Bush Administration Retribution Against its Critics

We have also found evidence that members of the Bush Administration have engaged in a pattern of seeking to exact retribution against a series of individuals, both inside and outside of the Administration, who have exposed wrongdoing or otherwise criticized their misconduct with regard to the Iraq War.

There is evidence that the Army's actions in demoting Bunnatine Greenhouse as the Chief Contracting Officer of the Army Corps of Engineers was in retribution for her testimony before Congress that undue favoritism was shown toward Halliburton in awarding contracts in Iraq. Among other things, it has been charged that "they went after her to destroy her;" and reported that "[h]er crime was not obstructing justice but pursuing it by vehemently questioning irregularities in the awarding of some $7 billion worth of no-bid contracts in Iraq to the Halliburton subsidiary Kellogg Brown & Root."

There is also evidence that members of the Bush Administration improperly harmed General Erik Shinseki by leaking the name of his replacement 14 months before his retirement, rendering him a lame duck and, according to media accounts, "embarrassing and neutralizing the Army's top officer." This appears to have been done in retaliation for his testimony before the Senate Armed Services Committee that the Defense Department's troop estimate was too low and "something on the order of several hundred thousand soldiers" would be needed. Among other things, an official acknowledged, "if you disagree with them in public, they'll come after you, the way they did with Shinseki;" while others have stated "Shinseki was publicly humiliated for suggesting it would take hundreds of thousands of troops to secure a post-Saddam Iraq."

There is further evidence that members of the Bush Administration sought to exact political retribution against a number of other individuals who exposed their misconduct regarding Iraq. Among other things, when ABC reporter Jeffrey Kofman reported on frustrated troops in Iraq, Matt Drudge reported that Mr. Kofman was gay, admitting "someone from the White House communications shop" had given him the information; when a CIA employee named "Jerry" found that Curveball was providing false information, he was transferred and "read the riot act;" and Samuel J. Provance, an Army intelligence officer, was demoted and stripped of his clearance after he "made clear to [his] superiors that [he] was troubled about what had happened [at Abu Ghraib]."

Ongoing Lies, Deceptions, and Manipulation

Our investigation has found that the pattern of misstatements by individuals in the Bush Administration has continued well after the invasion of Iraq.

Among other things, President Bush and Vice President Cheney have made misstatements such as the President declaring on May 1, 2003 that "major combat operations in Iraq have ended" and the Vice President stating in June, 2005, that "they're in the last throes, if you will, of the insurgency." On October 4, 2005,

President Bush stated that there were "30 Iraqi battalions in the lead;" when his own generals found that the number of combat ready Iraqi battalions had declined from 3 to 1. In May 2003, President Bush stated "we found the weapons of mass destruction; and Secretary Powell asserted "we have found the biological weapons vans;" however, on *The Washington Post* subsequently reported that on May 27, 2003, a U.S./U.K. fact finding mission issued a unanimous 122-page report concluding that the vans "had nothing to do with biological weapons."

E. Domestic Spying

The warrantless wiretap program disclosed by *The New York Times* directly violates the Foreign Intelligence Surveillance Act, 50 U.S.C. § 1801; and the warrant requirement of the Fourth Amendment, and, just as dangerously, threatens to create a precedent that may be used to violate numerous additional laws. The NSA's domestic database program disclosed by *USA Today* also appears to violate the Stored Communications Act and the Communications Act of 1934. In addition, the Administration appears to have briefed Members of the Intelligence Committees regarding these programs in violation of the National Security Act, 50 U.S.C. § 401, and we have found little evidence they provided useful intelligence or law enforcement information.

Legal Violations

With regard to the warrantless wiretapping program, there is little doubt that the AUMF was not intended by Congress to statutorily authorize domestic surveillance as the Administration contends. The Senate Majority Leader Tom Daschle has directly contradicted the Administration's argument, writing that the Senate rejected a "last-minute change [from the White House that] would have given the president broad authority to exercise expansive powers not just overseas - where we all understood he wanted authority to act - but right here in the United States, potentially against American citizens." The Attorney General himself acknowledged that Congressional leaders told him it would be "difficult, if not impossible" to obtain Congressional approval for warrantless domestic surveillance. The Bush Administration's argument that the *Hamdi* case (involving the detention of enemy combatants) supports their expansive view of the AUMF is also not credible. Among other experts, noted constitutional scholar Professor Laurence Tribe explains, it is difficult to argue that *Hamdi* supports the idea of warrantless surveillance of Americans, when they "are not even *alleged* to be enemies, much less *enemy combatants*." Likewise, the Administration's argument that the AUMF would constitute a statutory exception as envisioned by FISA is contradicted by the legislative history as well as the review by the non-partisan Congressional Research Service. Perhaps most significantly, in the recent *Hamdan* decision, the Supreme Court held that with regard to the analogous situation of military tribunals, there was "nothing in the text of the legislative history of the AUMF even hinting that Congress intended to expand or alter" the Administration's legal authority.

The Administration's assertion that it nonetheless has inherent constitutional authority to engage in domestic spying pursuant to the *Youngstown Steel Seizure* case is directly contradicted by the House-Senate Conference Report regarding FISA, which stated it is "[t]he intent of the conferees is to apply the standard set forth in Justice Jackson's concurring opinion in the *Steel Seizure* case: 'When a President takes measures incompatible with the express or implied will of Congress, his power is at the lowest ebb, for then he can rely only upon his own constitutional power minus any constitutional power of Congress over the matter.'" With regard to the Bush Administration's contention that a passage in the *In re Sealed Case* supports their inherent authority to conduct domestic warrantless surveillance these cases are inoperative, as they are all pre-FISA. The Congressional Research Service has concluded, "[i]n the wake of FISA's passage, the Court of Review's reliance [in the *In re Sealed Case*] on these pre-FISA cases ... as a basis for its assumption of the continued vitality of the President's inherent authority ... might be viewed as somewhat undercutting the persuasive force of the Court of Review's statement." Again, of particular importance in the Hamdan decision, the Court shot down the Administration's "inherent authority" argument, writing, "[w]hether or not the President had independent power, absent congressional authorization, to convene military commissions, he may not disregard limitations that Congress has, in proper exercise of its own war powers, placed on his powers."

With regard to the Fourth Amendment, the Department of Justice's assertion that warrantless domestic spying should be considered "reasonable" pursuant to the "special needs" exception to the Amendment's warrant requirement is undermined by the overwhelming weight of case law. This is summarized in the letter signed by Reagan FBI Director William Sessions and other legal experts ("the NSA spying program has *none* of the safeguards found critical to upholding 'special needs' searches in other contexts"). It is also difficult for the Administration to assert that warrantless surveillance is "reasonable" within the meaning of the Fourth Amendment when national security lawyers working for the Bush Administration have admitted that the low "washout" rate associated with the domestic spying program make it doubtful the program could be deemed sufficiently reasonable to pass muster under the Fourth Amendment.

The NSA's domestic database program would appear to violate both the Stored Communications Act, which prohibits the knowing disclosure of customer telephone records to the government, and the Communications Act, which prohibits the disclosure of telephone records to third parties. If the information was obtained on a "real time basis," as some government sources have indicated, it would also constitute a criminal violation of the Pen Register and Trap and Trace Statute.

With regard to the National Security Act, that law clearly specifies that the President is required to keep all Members of the House and Senate Intelligence Committees "fully and currently informed" of all intelligence activities except in the case of a highly classified covert action. Based on their review, the non-partisan

Congressional Research Service concluded, "the NSA surveillance program would appear to fall more closely under the definition of an intelligence collection program, rather than qualify as a covert action program as defined by statute."

Of additional concern is the fact that the legal justifications developed by the Bush Administration to support the NSA programs threaten to endanger even greater rights and liberties. For example, during the course of House Judiciary Committee hearings, Attorney General Gonzales acknowledged that based on these legal considerations he was "not going to rule out" the intentional surveillance of purely domestic communications without a court approved warrant. As Republican Senator Lindsey Graham warned, "you could use the inherent authority argument of a Commander-in-Chief at a time of war to almost wipe out anything Congress wanted to do."

At the same time the domestic spying programs have intruded on the civil liberties of millions of Americans, there is little evidence they have provided any appreciable intelligence or law enforcement benefit, and may have jeopardized numerous terrorism prosecutions. Government officials "have dismissed nearly all of [the NSA call leads] as potential suspects afer hearing nothing pertinent to a terrorist threat," stating that "[t]he information was so thin, and the connections were so remote, that they never led to anything," with FBI agents "jok[ing] that a new bunch of tips meant more calls to the Pizza Hut." FISA judges have testified that "the [warrantless wiretapping] program could imperil criminal prosecutions that grew out of the wiretaps." With regard to the domestic database program, an administration official "questioned whether the fruits of the NSA [database] program ... have been worth the cost to privacy; while a Pentagon consultant admitted, "[t]he vast majority of what we did with the [NSA] intelligence was ill-focused and not productive."

Evidence of Misleading Statements and Possible Bad Faith

President Bush and other high ranking members of the Bush Administration appear to have made a number of misleading statements concerning the NSA programs to Congress and the public. These include statements that (i) the government was only intercepting communications involving Americans pursuant to court approved surveillance; (ii) no purely domestic communications were intercepted under the warrantless wiretapping program; (iii) the government is not monitoring telephone calls and other communications within the U.S.; (iv) Members of Congress briefed by the Bush Administration had not questioned the legality or propriety of the NSA programs; and (v) if the surveillance programs had been in place prior to September 11, the government could have prevented the Al Qaeda attacks. We have also found evidence the NSA programs were developed in a manner designed to stifle legitimate opposition within the Administration

With respect to the issue of whether the government engaged in domestic warrantless wiretapping, President Bush and members of his Administration made a number of misleading statements. Among other things, prior to the disclosure by *The*

New York Times, then Associate Attorney General David Kris testified that "both before and after the PATRIOT Act, FISA can be used only against foreign powers and their agents;" President Bush himself declared that "any time you hear the United States government talking about wiretap, it requires ...a court order;" and Attorney General Gonzales testified "it's not the policy or the agenda of this President to authorize actions that would be in contravention of our criminal statutes."

The Bush Administration's claims that no domestic communications were intercepted under the warrantless wiretapping program also appear to be misleading. Government officials have acknowledged that the eavesdropping program "has captured what are purely domestic communications." The *Washington Times* reported that government sources stated, "the National Security Agency in cooperation with the FBI was allowed to monitor the telephone calls and e-mails of any American believed to be in contact with a person abroad suspected of being linked to al Qaeda or other terrorist groups."

Similarly, the Administration's claims that the government was not monitoring calls or, in President Bush's words "trolling through the personal lives of millions of innocent Americans" within the U.S. is belied by the *USA Today* revelations, as well as previous revelations by *The New York Times* (telecommunications companies "have been storing information on calling patterns and giving it to the federal government"); former AT&T employee Mark Klein (the NSA set up "secret room" in AT&T's offices capable of sweeping in telephone and Internet communications); and numerous reports of government programs set up to replace the discredited "Total Information Awareness" Program.

It also appears misleading for members of the Bush Administration, such as White House Counselor Dan Bartlett, to state, that lawmakers who have been briefed on the NSA programs "believed we are doing the right thing." In reality, numerous Members of Congress raised legal concerns. Among other Members, the Ranking Democrat on the Senate Intelligence Committee, Senator Rockefeller handwrote a letter to Vice President Cheney, stating, "[c]learly, the activities we discussed raise profound oversight issues," and House Minority Leader Pelosi stated, "she hadn't been told all of the information included in the *USA Today* story."

It also appears inappropriate for the Administration to assert that the NSA warrantless surveillance programs could have prevented the September 11 attacks, given that the 9/11 Commission concluded the government had compiled significant information regarding the responsible individuals and "took no action regarding them," and the FBI "had missed numerous opportunities to track down [the individuals] in the 20 months before the attacks."

The information we have been able to access concerning the creation of the domestic spying program indicates that there is evidence of possible bad faith in its development and implementation on the part of the Bush Administration. For example, officials within the Bush Administration have admitted that when the

domestic warrantless wiretapping program was created, "the 'lawyers group,' an organization of fewer than half a dozen government attorneys the National Security Council convenes to review top-secret intelligence programs, was bypassed." *Newsweek* reported that then counsel to the Vice President David Addington and his allies "made sure the possible dissenters [to the NSA wiretap program] were cut out of the loop," and within the Justice Department those who raised questions regarding the program "did so at their peril; [they were] ostracized ... denied promotions, while others left" DOJ entirely. It has also been reported that the domestic database program was set up outside of the Justice Department because "they feared that if they passed it down to other departments that might have some purview over the program they might have encountered a stream of objections."

E. Thwarting and Stonewalling Congress and the American People

Members of the House and Senate have been essentially stymied by both the Bush Administration and the Republican Congress from obtaining information concerning the matters described in this Report. As David Broder wrote, "Majority Republicans see themselves first and foremost as members of the Bush team – and do not want to make trouble by asking hard questions."

With regard to the allegations of abuse concerning the Downing Street Minutes and Iraq, the President has refused to respond to a letter from 122 Members of Congress, along with more than 500,000 Americans, asking him to explain whether the assertions set forth in the Downing Street Minutes were accurate; House Republican Chairmen of all relevant committees have refused to respond to a letter signed by 52 Members calling for hearings concerning the Downing Street Minutes; and the Administration has essentially ignored questions submitted by Democratic Members concerning false statements regarding nuclear claims and other misstatements concerning the Iraq war.

In addition, the Senate and House Intelligence Committees have refused to conduct any meaningful investigation concerning intelligence manipulation; House Republican Chairmen have refused numerous requests by Members to conduct meaningful hearings on torture and other abuses in Iraq; and the Administration has ignored a request for information concerning such abuses submitted by the Ranking Members of six committees. The President and Vice President have also ignored letters submitted by Members asking them to explain or act on the leaking of Valerie Plame's name to the press in apparent retaliation against her husband; and Republican Chairmen have refused requests to hold hearings on the leaks. Republicans in the House have also rejected myriad attempts by Members to ask the Administration to provide information regarding all of these matters pursuant to Resolutions of Inquiry.

Members of the House and Senate have also by and large been blocked by the Bush Administration from obtaining information concerning the domestic spying scandals. First, the Bush Administration rejected without explanation Democratic

requests for a special counsel to review the allegations of possible criminal misconduct concerning warrantless domestic surveillance. Second, the Administration stymied any meaningful attempt at congressional oversight, with Senate Judiciary Chairman Specter complaining, "[t]hey want to do just as they please, for as long as they can get away with it." Moreover, House Republican leaders rejected repeated Democratic proposals to create an independent panel or commission to review the NSA program, while Republican Committee Chairman rejected Democratic efforts to pursue Resolutions of Inquiry directing the Bush Administration to respond to congressional inquiries. When the Senate Intelligence Committee fell in line behind the Administration in rejecting an investigation, the Ranking Democrat, John Rockefeller declared, "[t]he committee is, to put it bluntly, basically under the control of the White House." The Administration has pursued various changes to FOIA and classification laws, and repeatedly invoked the states secret doctrine in an effort to help insulate their conduct from outside or court scrutiny.